

APPEAL NO. 010800

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 3, 2001, and March 21, 2001, with the record closing on March 21, 2001. With respect to the issue before her, the hearing officer determined that the employer did not make a bona fide offer of employment to the respondent (claimant) and the appellant (carrier) is not entitled to adjust the postinjury weekly earnings. On appeal, the carrier urges that this determination is not supported by the evidence. The appeals file contains no response from the claimant.

DECISION

Affirmed.

Section 408.103(e) provides that if an employee is offered a bona fide position of employment "that the employee is reasonably capable of performing, given the physical condition of the employee and the geographic accessibility of the position to the employee, the employee's weekly earnings after the injury are equal to the weekly wage for the position offered to the employee." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6(c) (Rule 129.6(c)) sets out more specific requirements for a bona fide offer.

Whether and when an employer makes a bona fide offer of employment, as defined by the 1989 Act and rules, are generally questions of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 962197, decided December 16, 1996. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We find sufficient evidence in the record to support the hearing officer's determination that the employer did not make a bona fide offer of employment to the claimant and that the carrier is not entitled to adjust the claimant's postinjury weekly earnings.

The decision and order of the hearing officer are affirmed.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Robert W. Potts  
Appeals Judge